

STATEMENT OF KENNETH L. PIERSON
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FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION,
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

June 14, 1983

Mr. Chairman, and Members of the Committee:

I appreciate the opportunity to appear before this Committee to discuss Title III of S. 1108, the "Motor Carrier Safety Act of 1983."

Trucks and buses travelling in Interstate and foreign commerce, including those transporting hazardous materials, are subject to Federal motor carrier safety regulations administered by the Bureau of Motor Carrier Safety. Enforcement of these regulations, however, is constrained due in part to the limited sanctions available for prosecution of violators of safety regulations. The Bureau of Motor Carrier Safety and the Department of Transportation appreciate and support the efforts of this Committee to meet this problem and improve motor carrier safety.

Title III is a positive step forward to improve the safety of the motoring public and those that reside along the highways. Title III would upgrade and improve our authority and state the intent of the Congress that unsafe trucking operations are unacceptable.

With regard to the substance of the bill there are a few sections which we believe can be improved upon or are unnecessary. I would like to comment specifically on section 304(2)(B), Definitions, section 308, Inspections and Warrants, section 310, Penalties, section 312, State Regulations, section 313,

Annual Inspection, section 314, Certification of Safety Fitness, and section 315, Heavy Trucks Research.

Definitions, Section 304(2)(B)

This section would define a "commercial motor vehicle" as one designed to transport more than 10 passengers, including the driver. In order to conform with other definitions in related acts and to exclude vanpool vehicles we would recommend a definition which covers vehicles transporting more than 15 passengers, including the driver. Further, the definition should contain an exemption for school buses when such buses are used to transport school children to or from school or school events. This change would conform the section to existing statutory authority exercised by the Department (e.g. the National Traffic and Motor Vehicle Safety Act administered by the National Highway Traffic Safety Administration).

We would amend section 304(2)(B) to read:

"(B) if such vehicle is designed to transport more than 15 passengers, including the driver, except for school buses, as defined by 15 U.S.C. 1391(14), when used in transporting primary, pre-primary, or secondary school students to or from such schools or events related to such schools; or".

Inspections and Warrants, Section 308

Section 308(a)(1) provides agents of the Secretary with the authority to enter upon and inspect a carrier's records and facilities. In addition to

being able to inspect a carrier's records, we believe it is essential that we have the authority to make a copy of such records and would prefer to have such authority expressly set forth in this section. We recommend amending section 308(a)(1) by adding the words "and make copies thereof" after the words "pertinent records."

Section 308(a)(2) would impose an unnecessary and burdensome requirement for the Department to secure a judicially issued warrant "for any entry or administrative inspection." Current procedures under which we do not seek judicially issued warrants have not been the subject of significant litigation or challenge. We are not aware of problems with current procedures which would dictate a need for a change. We strongly recommend deleting section 308(a)(2) in its entirety for we feel that its inclusion would unnecessarily restrict the Bureau's efforts to enforce safety regulations.

Penalties, Section 310

Section 310 provides the Department with penalty authority for violations of section 305 through 313 of this title. This section is of great interest to us; however, we believe that the section as drafted is inadequate to accomplish our objectives in this area. Accordingly, we recommend that the section be amended to read as set forth in the attached draft. The attached draft language would provide the Department with broad civil penalty authority for all violations of motor carrier safety regulations by all persons subject to the Act, as well as improved criminal penalty authority and the authority to seek injunctive relief, if and when necessary. Broader penalty authority in this area has long been a major objective of the Department, and is

particularly important in view of the prospect of further deregulation of the motor carrier industry.

Court Representation, Section 311

The Department of Justice has provided you with views indicating their opposition to the independent litigating authority contained in section 311. DOT defers to the views of the Department of Justice on this issue.

State Regulations, Section 312

Section 312(a) allows more stringent rules by States if they are consistent with the Federal requirements. The provision does not indicate who is to determine an inconsistency or how an inconsistency is to be determined. We recommend adding the phrase "as determined by the Secretary" to the end of section 312(a).

Section 312(b)(1) and (2) can be read as providing the Secretary authority to preempt State regulation of intrastate commerce in instances other than those which involve the imposition of an undue burden on Interstate commerce. This would go beyond our current jurisdiction in this area, and is unwarranted. Consequently, we recommend that section 312(b)(1) and (2) be deleted while retaining section 312(b)(3).

Annual Inspection, Section 313

Section 313 would require every commercial vehicle to be subject to an

annual inspection. We do not believe this would be of any substantive value. The cost of removing every commercial vehicle from service for 1 day would be significant, since an excess of 8 million vehicles would be involved. The State reporting requirement would be burdensome. The existing system of mandatory self-inspection with Federal and State spotchecks by unannounced road checks is clearly preferable for commercial vehicles. We recommend deleting section 313 in its entirety.

Certification of Safety Fitness, Section 314

Section 314 requires the Secretary and the Interstate Commerce Commission (ICC) to jointly establish a procedure to determine the safety fitness of persons seeking new or additional operating authority. Fitness ratings are now provided to the ICC by this Department in such cases. We recommend deletion of this section.

Heavy Trucks Research, Section 315

Section 315 should be revised to clarify that crashworthiness relates to driver compartments, not the crashworthiness of cargo compartments which is covered by other statutes, including specification bulk tanks for hazardous materials moving by highway. We recommend adding "of driver's compartment" after the word "crashworthiness."

This completes my statement. I would be pleased to respond to your questions.

ATTACHMENT

Section 310(a). Section 507 of title 49, United States Code, is amended

(1) by adding the following new subsection after subsection (b):

"(c) The Attorney General, at the request of the Secretary, may bring an action in a appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunction relief, interim equitable relief, and punitive damages,"; and

(2) by redesigning subsections (c) and (d) as subsections (d) and (e).

(b) Section 521(b) of title 49, United States Code, is amended to read:

"(1) If the Secretary finds that a violation of this title or a violation of a regulation issued under this title or of any other regulation issued by the Department of Transportation has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and specify the actions which the Secretary proposes to be taken in order to avoid subsequent similar violations. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of his intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, United States Code, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(2) Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of this title or a regulation issued under this title or a violation of any other regulation issued by the Department of Transportation or who causes a violation to be committed, shall be liable to the United States for a civil penalty not to exceed \$2,500 for each offense. If the Secretary determines that a safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, he may assess a civil penalty not to exceed \$10,000 for each offense. Each day of a violation shall constitute a separate offense. The amount of any such penalty shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

(3) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

(4) If, upon inspection or investigation, the Secretary determines that a violation, or combination of violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service or order an employer to cease all or part of his commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that reasonably required to abate the hazard. Subsequent to the issuance of such order, opportunity to review shall be provided in accordance with section 554 of

title 5, United States Code, except that such review occur not later than 10 days following issuance of such order.

(5) Any person who knowingly and willfully violates any provision of this title or a regulation issued under this title or any other regulation issued by the Department of Transportation shall, upon conviction, be subject for each offense to a fine not to exceed \$10,000 or imprisonment for a term not to exceed 1 year, or both: Provided, however, That if such violator is an employee he shall only be liable, upon conviction, for a fine not to exceed \$2,500.

(6) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where he has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(7) All penalties and fines imposed under this section shall be deposited into the Treasury as miscellaneous receipts.

(8) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

(9) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules Criminal Procedure."